TAN TECK CHIANG v. YONG JOO CHUAN & ANOR.

[O.C.J. (Yusoff J.) April 11, 1980]
[Kuching — Civil Suit No. K 290 of 1972]

Landlord and Tenant — Rent-controlled premises — Notice to quit — Validity of — Rent Control Ordinance Sarawak (Cap. 86), s. 15(1)(f).

The plaintiff in this case was the landlord of a rent-controlled premises known as 43 Gambier Road, Kuching. He claimed for recovery of possession of the ground floor of the premises from the defendants/tenants.

The tenancy was for a fixed term of 15 years referred to in the agreement as "commencing from the date hereof". The agreement was signed on September 3, 1957 but registered at the land office on September 25, 1957. On June 22, 1971, while the tenancy was still subsisting the plaintiff sent the respondent a letter purporting to be a Notice to Quit.

The defendants contended that the tenancy commenced from the date of registration. They also argued that the said notice to quit was not valid. They relied on a remark made by the Federal Court in deciding an appeal by the defendants in this case ([1978] 1 M.L.J. 173) regarding an application for amendment of statement of claim: "It (the letter) may show an intention to take back possession after September 1972. Whether it is competent to so determine during the currency of a term may be in doubt. As a notice to determine it should be clear, unequivocal and certain."

Held, allowing the plaintiff's claim: (1) a Notice to Quit must be clear and certain so as to bind the party who gives it and to enable the party to whom it is given to act upon it at the time when it is given; the intention to the party giving it is also important;

(2) the premises became rent-controlled premises from the inception of the tenancy and any notice determining the tenancy has to comply with the Ordinance. The event may take place even during the currency of the contractual term; the notice of June 22, 1971 was therefore a valid and proper notice.

Cases referred to:-

(1) *Yong Joo Chuan* v. *Tan Teck Chiang* [1978] 1 M.L.J. 173.
(2) *Doe d. Lyster* v. *Goldwin* (1841) 2 Q.B. 143.
(3) *Ahearn* v. *Bellman* (1879) 4 Ex. D. 201.
(4) *Jones* v. *Phipps* (1868) L.R. 3 Q.B. 567.

CIVIL SUIT.

Chew Pok Oi for the plaintiff.

W.T. Voon (stood in for *Patrick Wan*) for the defendants.

Cur. Adv. Vult.

Yusoff J.: This is a claim for recovery of possession of the ground-floor of the premises known as No. 43 Gambier Road, Kuching, under section 15(1)(f) of the Rent Control Ordinance Sarawak, Cap. 86. The issue and arguments before the court concerned the validity of the notice to quit served by the landlord (the plaintiff) to the tenant (the respondent). It is common ground that the premises was governed by the Rent Control Ordinance.

The tenancy was for a fixed term of 15 years referred to in the agreement at Exhibit AB1 as 'commencing from the date hereof.' The agreement was signed on September 3, 1957 but registered at the Land Office Kuching on September 25, 1957. Registration was required under section 41 of the Land Code, Sarawak, Cap. 27, now repealed.

The plaintiff's counsel contended that the tenancy commenced from the date of signature but the defence counsel argued that it should commence from the date of registration, by virtue of section 41 of the repealed Land Code which provided that without registration the instrument would not effectually pass any interest in the land. In my opinion, the tenancy commenced from September 3, 1957, the date when the instrument was executed, though it would not effectually pass the interest in the land to the defendant, the agreement created an equitable right to tenancy, which became a legal interest on its registration.

On June 22, 1971, while the tenancy was still subsisting the plaintiff sent the following letter to the defendants purported to be a notice to quit. The defendants' counsel contended that this was not a valid and proper notice served on the defendants:

22nd June, 1971.

Messrs. Yong Joo Chuan & Yong Joo Kok.
No. 43, Gambier Road,
KUCHING.

Dear Sirs,

Re: *Memorandum of Sublease No. L.1740/1957*
No. 43, Gambier Road, Kuching

We refer to Memorandum of Sublease No. L.1740/1957 in respect of premises known as No. 43, Gambier Road, Kuching. The said Memorandum of Sublease will expire on the 2nd day of September, 1972. *Please note* that we shall require the said premises for our own use on the expiration thereof and ample notice is hereby given you to look for alternative accommodation in the meantime. We look forward to your kind co-operation in the matter.

Yours faithfully,
Sgd.
(TAN TECK CHIANG)

The Federal Court[1] in deciding an appeal by the respondent in this case regarding an application for amendment of the statement of claim made these remarks on which the defendants now relies:

"It (the letter) may show an intention to take back possession after September 1972. Whether it is competent to so determine during the currency of a term may be in doubt. As a notice to determine it should be clear, unequivocal and certain."

I would have agreed with the superior court, though in *obiter*, which is easier to do but, for the following reasons:

(a) Undoubtedly, the principle is, a notice to quit must be clear and certain, so as to bind the party who gives it and to enable the party to whom it is given to act upon it, at the time when it is given — *Doe d. Lyster* v. *Goldwin.*[2] But it has been said that the intention of the party giving it is also important and inaccuracies corrected to make it effectual — *Halsbury's* Laws of England 3rd Ed. Vol. 23 para. 1173.

The letter dated June 22, 1971, clearly expressed that the plaintiff required the premises for his own use on expiration of the lease and that notice was given to the respondent to look for alternative accommodation. The letter having been written ahead of one year before the lease expired on September 2, 1972 complied with para. (ii) of section 15(1)(f) of the Ordinance and it was not disputed that there was no change of ownership of the premises within the year preceding the date of the notice. These facts constitute sufficient notice determining the tenancy.

(b) The ambiguity expressed by the Federal Court, arose with regard to the cooperation sought by the plaintiff of the respondent. The plaintiff's letter ended "we look forward to your kind co-operation in the matter." In my view, this polite gesture by the plaintiff does not affect his intention and make the notice insufficient. In *Ahearn* v. *Bellman*[3] (*Woodfall* Landlord and Tenant 27th Ed. Vol. 1 at 944) Cotton L.J. observed:

"It has been said and truly said, that a notice to determine the tenancy must be clear and unambiguous; but that does not at all mean that a notice otherwise sufficient is made insufficient by its being accompanied by something else."

This something else in the plaintiff's letter of June 22, 1971 is merely a polite gesture which seemed to be his habit in ending his letters. This is also shown in his subsequent letter dated January 6, 1971 at Exhibit P1 addressed to the respondent.

This does not in my view, discolour the intention of the writer.

(c) In *Jones* v. *Phipps*[4] it was held that a notice to quit must be such as that which the tenant may act upon with safety.

From subsequent correspondence between the parties dated January 6, 1972 and February 23, 1972, it would seem that the respondent had gathered the intention of the plaintiff and that he could safely act on the notice to quit but he had elected not to comply with it and instead insisted to put certain facts on record. These letters not produced at the hearing of the appeal at the Federal Court, are now reproduced:

"Tan Teck Chiang,
Chop Soon Heng,
43, Gambier Road,
Kuching.

6th January, 1972.

Messrs. Yong Joo Chuan & Yong Joo Kok,
No. 43, Gambier Road,
KUCHING.

Dear Sirs,

Re: *Memorandum of Sublease No. L.1740/1957*
No. 43, Gambier Road, Kuching

Further to my letter dated the 22nd June, 1971, please take all necessary steps to look for alternative accommodation before the expiry of the said Memorandum of Sublease on the 2nd September, 1972. I understand that you are owning a vacant shophouse at Ban Hock Road, Kuching, and I shall be grateful if you can make arrangements to move into the said shophouse before the 2nd September, 1972. I look forward to your kind co-operation in the matter.

Yours faithfully,
Sgd.
(TAN TECK CHIANG)
Yong Joo Chuan &
Yong Joo Kok,
43, Gambier Road,
Kuching.

23rd February, 1972.

Mr. Tan Teck Chiang (and others),
Chop Soon Heng (1st Floor),
43, Gambier Road,
Kuching.

Dear Sirs,

Re: *Memorandum of Sublease No. L.1740/1957*
No. 43, Gambier Road, Kuching

We thank you for your letters dated 22nd June, 1971 and 6th January, 1972, the contents of which are noted.

We wish to place on record that we do not own any shophouse at Ban Hock Road as alleged by you.

Yours faithfully,
Sgd.
(YONG JOO CHUAN)
Sgd.
(YONG JOO KOK)"

(d) Lastly whether it was competent to determine the tenancy during the currency of a term.

The tenancy was created in 1957. The Rent Control Ordinance has been in force in Kuching Municipal area on January 1, 1949. The memorandum of the lease in respect of the premises does not stipulate the determination of tenancy. But the premises being rent controlled, the Rent Control Ordinance would apply. In my opinion, the premises became controlled premises from the inception of the tenancy and any notice determining the tenancy has to comply with the Ordinance. This event may take place even during the currency of the contractual term.

For these reasons it is my ruling that the notice dated June 22, 1971 was a valid and proper notice.

Claim allowed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.; Yong & Co.*

TOH YEW SING & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Tan Chiaw Thong J.) May 14, 1980]
[Sibu — Criminal Appeal No. 5 of 1980]

Criminal Law and Procedure — Appeal against order of forfeiture by lower court under section 17(2) of Gambling Ordinance — Notice of appeal and petition of appeal signed by counsel for appellants — Whether compliance with provisions of Criminal Procedure Code — Gambling Ordinance (Cap. 138), ss. 6(1) & 17(2) — Criminal Procedure Code, s. 307(i) to (iv).

The appellants in this case sought to appeal against the order of forfeiture made against them by the lower court under section 17(2) of the Gambling Ordinance, forfeiting certain sums of money found on their persons when the police raided a room in a local hotel. The appellants had pleaded guilty to and had been convicted in the lower court of an offence of playing a prohibited game under the First Schedule to, and contrary to, section 6(1) of the said Ordinance. The notice of appeal and the petition of appeal were signed by counsel for the appellants.

Held, rejecting the appeal: the notice of appeal and the petition of appeal must be made by and therefore must bear the signature, thumbprint or mark of the appellant, whichever is applicable. A petition signed by anyone else including an advocate on behalf of the appellant is not a compliance with the requirements of subsections (i) and (iv) of section 307 of the Criminal Procedure Code.

Cases referred to:-

(1) *Basri bin Ismail @ Perdansah Melanos* v. *Public Prosecutor* Criminal Appeal No. K. 24 of 1979 (unreported).

(2) *Pitting bin Haji Mohamed Ali* v. *Public Prosecutor* [1979] 2 M.L.J. 136.

(3) *Municipal Commissioner, Malacca* v. *Teh Chwee Swi* [1971] 2 M.L.J. 274.

(4) *R.* v. *McCready* [1978] 3 All E.R. 967; *The London Times* dated March 10, 1978.